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Washington, D.C. 20231

12 JAN 2000

John P. White  
COOPER & DUNHAM  
1185 Avenue of the Americas  
New York, New York 10036

In re Application of  
GREENWALD :  
Application No.: 09/043,944 :  
PCT No.: PCT/US96/15727 : DECISION ON PETITION  
Int. Filing Date: 27 September 1996 : TO WITHDRAW HOLDING  
Priority Date: 27 September 1995 : OF ABANDONMENT  
Attorney Docket No.: 48231AFCTUS :  
For: PHARMACEUTICAL COMPOSITIONS :  
PREPARED BY ADDITION OF A :  
FLAVOUR VEHICLE TO A :  
MEDICAMENT :

This is a decision on applicants' "COMMUNICATION REQUESTING WITHDRAWAL OF APRIL 6, 1999 NOTIFICATION OF ABANDONMENT" which is being treated as a petition under 37 CFR 1.181 filed in the United States Patent and Trademark Office on 11 May 1999.

**BACKGROUND**

On 27 September 1996, applicants filed international application no. PCT/US96/15727 which claimed a priority date of 27 September 1995, and elected the United States. On 21 April 1997, a Demand was filed with the International Preliminary Examining Authority. As a result, the deadline for entry into the national stage in the United States expired 30 months from the priority date, on 27 March 1998.

On 27 March 1998, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*: the basic national fee and a copy of the international application. An oath or declaration was not included.

On 01 May 1998, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration executed by the inventor and the \$130.00 surcharge for filing after the thirty-month period were required. The notification set a

ONE (1) MONTH period for response.

On 06 April 1999, the United States Elected Office mailed a NOTIFICATION OF ABANDONMENT UNDER 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 01 May 1998 within the time period set therein.

On 11 May 1999, applicants filed present petition along with a copy of the docketing report.

### DISCUSSION

With regards to applicants' request that the holding of abandonment be withdrawn, a proper showing in order to establish that papers were not received as set forth in the Official Gazette at 1156 OG 53 must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Applicant's petition filed 11 May 1999 satisfies items (1) and (2) above. However, as to item (3) applicants have provided a copy of the docket record which purportedly shows where the paper would have been entered had it been received. The printout of the docket report for this specific application is not sufficient to establish that the Notification of Missing Requirements was not received and mis-docketed for another application. Accordingly, applicant is required to provide docket record for 01 June 1998, indicating all applications for which a response was due on said date.

Thus, applicants have not provided the proper showing necessary to withdraw the holding of abandonment and the petition may not be properly granted.

### CONCLUSION

The Petition to Withdraw Holding of Abandonment under 37 CFR 1.181 has been considered, however, for the reasons indicated above, the petition stands **DISMISSED** without prejudice and the application remains **ABANDONED**.

If reconsideration of the merits of this petition is desired, a proper response must be filed within TWO (2) MONTH from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." No additional fee is required. Extensions of time under 37 CFR 1.136(a) are permitted.

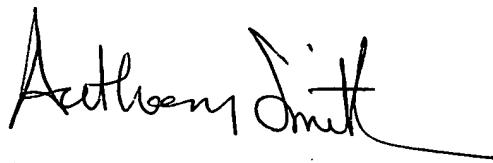
Any renewed petition filed must include a proper reply. A proper reply must include a

copy of the docket record for all communications received at practitioner's office having a due date of 01 June 1998.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



Richard Cole  
PCT Legal Examiner  
PCT Legal Office



Anthony Smith  
PCT Petitions Attorney  
PCT Legal Office  
Telephone 703-308-6314  
Fax: 703-308-6459